

Department of Social and Health Services

DP Code/Title: PL-WJ HIPAA Privacy Rule

Program Level - 030 Mental Health

Budget Period: 2003-05 Version: C1 030 2003-05 Fall Update

Recommendation Summary Text:

This decision package requests funding to assure compliance with the federal Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. It requires that "individually identifiable health information" be kept confidential and that access is secure across the department.

Fiscal Detail:

Operating Expenditures

	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Program 030			
001-1 General Fund - Basic Account-State	154,000	146,000	300,000
001-C General Fund - Basic Account-DSHS Medicaid Federa	112,000	107,000	219,000
Total Cost	266,000	253,000	519,000

Staffing

	<u>FY 1</u>	<u>FY 2</u>	<u>Annual Avg</u>
Program 030 FTEs	3.0	3.0	3.0

Package Description:

HIPAA was signed into law August 1996. This reform covers health care fraud and abuse prevention, medical liability reform, and administrative simplifications. Administrative Simplification is being implemented in three rules. This package requests funding to be in compliance with rule two, Privacy, by the implementation date of April 14, 2003. It should be noted that the privacy rule overlays the entire administrative simplification act.

Currently, Washington State operates under the Uniform Health Care Information Act (Chapter 70.02 RCW) and Executive Order 00-03 to protect personal information. The HIPAA privacy rule sets the floor for national privacy protections by protecting individually identifiable health information maintained or transmitted by DSHS and it gives clients more control over how their health information is used and disclosed. Both the Governor's Executive Order 00-03 and the HIPAA privacy rule require the appointment of a privacy officer and establishment of a privacy complaint process.

Implementation of the privacy rule is a tremendous undertaking for the Department of Social and Health Services (DSHS). It requires cultural and system changes in the way DSHS conducts business operations. DSHS must determine how health information is currently used and disclosed in the agency, and what additional protections are necessary for compliance. DSHS then must implement and maintain those changes. The privacy rule will be updated at the federal level and any changes will require continued tracking, analysis, and timely implementation to remain compliant.

After the rule is implemented on April 14, 2003, DSHS must continue to support the HIPAA privacy rule practices and ensure that all new DSHS employees are properly trained.

Narrative Justification and Impact Statement

How contributes to strategic plan:

This decision package meets the agency balanced scorecard goal of integrating and coordinating information systems.

Performance Measure Detail

Goal: 28Z Integrate and coordinate information systems

Outcome Measures

Incremental Changes

FY 1

FY 2

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tz4	DSHS will be 90% compliant with HIPAA Rule 2	90%	98%
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Reason for change:

Compliance with the HIPAA privacy rule is a federal mandate. Inability to comply with this rule will create substantive barriers in conducting day-to-day business with medical providers, business associates and partners who serve department clients. Clients have new rights under this rule and the new, higher standard must be achieved.

Failure to become or remain compliant puts DSHS at risk for civil and criminal penalties. Such penalties applied by the Department of Health and Human Services are substantial:

Civil Penalties

If a covered entity violates the privacy rule it may be penalized up to \$100 for each violation, not to exceed \$25,000 per year for each requirement violated.

Criminal Penalties

There are three types of wrongful disclosures criminal penalties:

- a) Knowing only, a \$50,000 fine, 1 year imprisonment, or both;
- b) False pretenses, a \$100,000 fine, 5 years imprisonment, or both;
- c) Use for commercial or personal gain or malicious harm, a \$250,000 fine, 10 years imprisonment, or both.

Impact on clients and services:

Maintaining compliance with the HIPAA Privacy Rule after implementation will improve client relationships and ensure that clients are able to disclose health information without fear of a privacy breach. This rule gives clients more control over how their health information is used and disclosed. DSHS clients are likely supporters of the rule, which covers over 920,000 clients. Over 45,000 medical providers that serve DSHS clients will be required to comply with the privacy rule.

Impact on other state programs:

Maintaining compliance with the HIPAA Privacy Rule impacts all DSHS administrations. Approximately 18,000 DSHS employees are affected.

Other state agencies impacted by the HIPAA Privacy Rule include: Department of Health, Health Care Authority, Department of Corrections, Veterans Affairs, and the Department of Labor and Industries.

Relationship to capital budget:

Not applicable

Required changes to existing RCW, WAC, contract, or plan:

The HIPAA Privacy Rule may require DSHS to adopt administrative rules for clients. DSHS will also have to ensure that all the requirements are followed to avoid sanctions and fines for non-compliance.

Over 14,000 department contracts are affected and must be modified to address HIPAA requirements.

Alternatives explored by agency:

Implementation of the HIPAA Privacy Rule is a federal mandate. There are no other alternatives available to DSHS except to risk paying fines or penalties for non-compliance. As such, the department is taking an enterprise approach to privacy implementation to assure uniform compliance and to minimize long-term costs for compliance. For example, a uniform computer-based training package will be developed to meet training requirements.

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Budget impacts in future biennia:

The HIPAA privacy rule will impact future biennial expenditures. Routine changes to the privacy rule are anticipated. Initial and on-going compliance will require changes to agency policy, administrative procedures, WACs, and DSHS business models to assure long-term compliance.

Distinction between one-time and ongoing costs:

One-time cost include project salary and benefits, hardware and software, and implementation.

Ongoing cost include salary and benefits associated with maintaining HIPAA compliance, training, travel, and supplies.

Effects of non-funding:

Failure to become or remain compliant puts DSHS at risk for civil and criminal penalties. Such penalties applied by the Department of Health and Human Services are substantial:

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Non-funding would require DSHS to divert funding from client services to comply with this federal mandate or risk the penalties discussed above.

Expenditure Calculations and Assumptions:

See attachment - AW PL- WJ HIPAA Privacy Rule.xls

<u>Object Detail</u>	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Program 030 Objects			
A Salaries And Wages	119,000	119,000	238,000
B Employee Benefits	30,000	30,000	60,000
E Goods And Services	18,000	18,000	36,000
G Travel	3,000	3,000	6,000
J Capital Outlays	8,000	0	8,000
T Intra-Agency Reimbursements	88,000	83,000	171,000
Total Objects	266,000	253,000	519,000

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DSHS Source Code Detail

Program 030		<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Fund 001-1, General Fund - Basic Account-State				
<u>Sources</u>	<u>Title</u>			
0011	General Fund State	154,000	146,000	300,000
<i>Total for Fund 001-1</i>		154,000	146,000	300,000
Fund 001-C, General Fund - Basic Account-DSHS Medicaid Federa				
<u>Sources</u>	<u>Title</u>			
19UL	Title XIX Admin (50%)	112,000	107,000	219,000
<i>Total for Fund 001-C</i>		112,000	107,000	219,000
Total Program 030		266,000	253,000	519,000